

INFORMATION PAPER

AHRC-DOE

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SUBJECT: Overview of the Physical Disability Evaluation System

1. Purpose. To provide an overview of the U.S. Army Physical Disability Evaluation System (PDES).

2. Facts.

a. **Organization:** The functional proponent for the PDES is the U.S. Army Physical Disability Agency (USAPDA), located at Walter Reed Army Medical Center, 6900 Georgia Ave, NW, Washington, D.C. 20307-5001. Subordinate Physical Evaluation Boards (PEBs) are located at USAPDA; Fort Sam Houston, Texas; and Fort Lewis, Washington.

b. **Governing statute and implementing publications:** Title 10, U.S.C., chapter 61, provides the Secretaries of the Military Departments with authority to retire or separate members when the Secretary finds that they are unfit to perform their military duties because of physical disability. DoD Directive 1332.18, DoD Instruction 1332.38, DoD Instruction 1332.39, and AR 635-40¹ set forth the policies and procedures implementing the statute.

c. **Referral into PDES:** Soldiers are referred into the PDES five ways:

(1) Medical Evaluation Board (MEB): The medical treatment facility (MTF) initiates a MEB under the provisions of AR 40-400, chapter 7, when a Soldier has received maximum benefit of medical care for a condition which may render the Soldier unfit for further military service. (Per DoDI 1332.38, Soldiers shall be referred for evaluation within one year of the diagnosis of their medical condition if they are unable to return to military duty.) The MEB documents whether the Soldier meets the medical retention standards of AR 40-501, chapter 3. If the Soldier does not meet medical retention standards, the MTF refers the case to the applicable Physical Evaluation Board (PEB) for a determination of fitness under the policies and procedures of DoD Instruction 1332.38 and AR 635-40.

(2) MOS/Medical Retention Board (MMRB): The MMRB is an administrative screening board conducted under the provisions of AR 600-60 that determines whether Soldiers who meet medical retention standards but have permanent 3 or 4 physical profiles can physically perform their primary military occupational specialty (branch/specialty code for officers) in a worldwide, field environment. Referral to a MEB/PEB² is one of four actions the MMRB Convening Authority (MMRBCA) may direct. When the MMRBCA directs referral to a MEB/PEB, conduct of the PEB is normally mandatory without regard to the findings of the MEB. The MEB

¹ The DoD issuances have precedence since they post date AR 635-40, which is under revision.

² See AR 600-60, para 4-20b, for specific finding applicable to Reserve Component soldiers not on active duty of more than 30 days.

may only return the Soldier to duty when it determines the Soldier meets medical retention standards and upgrades the profile to a permanent 2 or 1. (If the MEB maintains the permanent 3 profile but upgrades the soldier's duty limitations, the MTF may refer the soldier back to the MMRB to reconsider its recommendations.)

(3) Fitness for duty medical examination: Commanders may refer Soldiers to the MTF for a medical examination under the provisions of AR 600-20, para 5-4, when they believe the Soldier is unable to perform MOS or specialty code duties due to a medical condition. This examination may cause conduct of a MEB, which will be forwarded to the PEB when it finds that the Soldier's medical condition falls below medical retention standards.

(4) HQDA action: The Commander, Human Resources Command, upon recommendation of The Surgeon General, may refer a Soldier to the responsible MTF for medical evaluation as described in (3) above. The Commander, HRC, may direct referral into the PDES upon disapproving an MMRBCA's recommendation to reclassify a Soldier (or branch transfer an officer).

(5) RC nonduty related process: DoD Directive 1332.18, as implemented by DoD Instruction 1332.38, affords RC members pending separation for medical disqualification (separation for failure to meet medical retention standards) the right to be referred to a PEB for solely a fitness determination. Referral is not mandatory but upon the request of the Soldier. These are cases of RC Active Status Soldiers not on extended active duty whose disqualifying medical impairments were incurred outside of military service and involve no issue of aggravation while in a duty status. (Thus, there is no statutory entitlement to PDES evaluation.) Heretofore, these soldiers were separated based solely on not meeting medical retention standards. Referral to the PEB allows these Soldiers to have fitness determined under the standards applied to Active Army Soldiers and RC Soldiers with service-incurred conditions (see paragraph "e" below). The USAR Regional Readiness Command or the ARNG State Headquarters refers the case to the PEB—not the MTF. (The RC soldier may be referred to the MTF for conduct of a physical, but the MTF does not conduct a MEB.)

(6) Coverage of cadets of the US military academies: The NDAA 05 amended 10 USC chapter 61 to provide disability coverage for cadets of the US military academies. This coverage is effective for disabilities incurred after 28 October 2004.

d. **Counseling**: The individual responsible for counseling Soldiers referred into the PDES with a MEB is the MTF Physical Evaluation Board Liaison Officer (PEBLO). The PEBLO counsels the Soldier on MEB/PEB findings and related rights and benefits. If the MTF determines that the Soldier is not mentally competent, the PEBLO counsels the designated next-of-kin. For USAR nonduty related cases, the Soldier's commander or the commander's designee is the responsible individual. For ARNG nonduty related cases, the State Military Personnel Office, Health Service Specialist, is the responsible individual.

e. **Fitness standard:** The standard for determining fitness is whether the medical condition precludes the Soldier from reasonably performing the duties of his or her office, grade, rank, or rating.

(1) Worldwide deployability: Per DoD Instruction 1332.38, inability to perform the duties of office, grade, rank or rating in every geographic location and under every conceivable circumstance will not be the sole basis for a finding of unfitness. Deployability, however, may be used as a consideration in determining fitness.

(2) Performance-based: The PDES relies heavily on the performance data provided by the Soldier's immediate commander. Variance in case findings is often the result of inadequate information being provided relative to the Soldier's duty performance.

f. **Presumption of fitness:** When Soldiers are referred into the PDES after their request for length of service retirement has been approved, or an officer is within twelve months of mandatory retirement, or an enlisted Soldier is within 12 months of his or her retention control point (RCP) with retirement eligibility at RCP, the Soldier enters the disability system under the presumption that he or she is physically fit. This is known as the Presumption of Fitness Rule. (This rule is not applied to RC cases referred under the nonduty related process described at paragraph 2c(5) above.)

(1) Philosophy: The Soldier is presumed fit because he or she has continued to perform military duty up to the point of retirement for reasons other than physical disability. Disability retired pay is to compensate a Soldier whose career is terminated solely for reasons of disability.

(2) History: The presumption rule originated as DoD policy in 1973 as a result of Congressional dissatisfaction with general officers and medical officers retiring for physical disability in conjunction with processing for length of service retirement.

g. **Overcoming the presumption:** Application of the Presumption of Fitness Rule does not mandate a finding of fit. It is a rebuttable presumption that is overcome if the preponderance of evidence establishes the circumstances described below per DoD Instruction 1332.38.

(1) Acute, grave illness or injury: Within the presumptive period an acute, grave illness or injury occurs that would prevent the member from performing further duty if he or she were not retiring; or

(2) Deterioration of a chronic condition: Within the presumptive period a serious deterioration of a previously diagnosed condition, to include a chronic condition, occurs and the deterioration would preclude further duty if the member were not retiring; or

(3) Inadequate duty performance: The condition for which the member is referred is a chronic condition, and a preponderance of evidence establishes that the member was not

performing duties befitting his or her experience in the office, grade, rank, or rating before entering the presumptive period.

h. **Rating Schedule:** Once a determination of physical unfitness is made, the PEB is required by law to rate the disability using the Department of Veterans Affairs Schedule for Rating Disabilities. DoD Instruction 1332.39 and AR 635-40, Appendix B, modify those provisions of the rating schedule inapplicable to the military and clarify rating guidance for specific conditions. Ratings can range from 0 to 100 percent rising in increments of 10.

i. **Disposition:** Four factors determine whether disposition is fit for duty, separation, permanent retirement, or temporary retirement: whether the Soldier can perform in his MOS; the rating percentage; the stability of the disabling condition; and years of Active Service (active duty days) in the case of pre-existing conditions.

(1) Coverage for pre-existing disabilities: With the passage of the National Defense Authorization Act for Fiscal Year 2000 (NDAA 00), members with unfitting disabilities determined to be hereditary or congenital, or otherwise unfitting due to the natural progression of a pre-existing condition, are entitled to disability retired or severance pay when the member is on a call to active duty of more than 30 days and will have a total of 8 years of Active Service (active duty days) at the time of disability separation or retirement.

(2) Permanent retirement: Permanent disability retirement occurs if the Soldier is found unfit, the disability is determined permanent and stable and rated at a minimum of 30%, or the Soldier has 20 years of service as computed under 10 USC 1208. (For Reserve Component Soldiers, this means at least 7200 points.)

(3) Temporary retirement: Temporary disability retirement occurs if the Soldier is found unfit and entitled to permanent disability retirement except that the disability is not stable for rating purposes. "Stable for rating purposes" refers to whether the condition will change within the next five years so as to warrant a different disability rating. However, stability does not include latent impairment--what might happen in the future.

(4) Separation with severance pay: Separation with disability severance pay occurs if the Soldier is found unfit, has less than 20 years of service as computed under 10 USC 1208, and has a disability rating of less than 30%.

(5) Separation without benefits: Separation without benefits occurs if the unfitting disability existed prior to service, was not permanently aggravated by military service, and the member has less than 8 years of Active Service (active duty days); or the disability was incurred while the Soldier was absent without leave or while engaging in an act of misconduct or willful negligence.

(6) Fit for Duty: The Soldier is judged to be fit when he can reasonably perform the duties of his grade and military occupational specialty (or branch for officers).

j. **Periodic medical reexamination and tenure**: When placed on the Temporary Disability Retirement List (TDRL), the law requires the member to undergo a periodic medical reexamination within 18 months at a minimum followed by PEB evaluation. The Soldier may be retained on the TDRL or a final determination may be made. While the law provides for a maximum tenure of 5 years on the TDRL, there is no entitlement to be retained for the entire period.

k. **Factors affecting compensation**: Military disability compensation is based on disposition, rank, years of service, and the definition of “retired pay base” applicable to the soldier.

(1) Retired pay: For permanent retirement or placement on the TDRL, compensation is based on the higher of two computations: Disability rating times retired pay base; or $2.5 \times \text{years of service} \times \text{retired pay base}$. Soldiers on the TDRL receive no less than 50% of their retired pay base. The computation of retired pay base depends upon when the Soldier entered the service. For those Soldiers who entered prior to 8 September 1980, retired pay base is the highest basic pay received. For those who entered after 7 September 1980, it is the average of the high 36 months of basic pay. With the passage of NDAA 05, for members of the RC, the high 36 months is calculated as if they served on active duty for the high 36-months regardless of whether they retired under 10 USC 1201/1202 or 10 USC 1204/1205.

(2) Severance pay: Disability severance pay equals 2 months basic pay for each year of service not to exceed 12 years (a maximum of 24 months basic pay).

(3) Promotion selection: Per amendment to 10 USC 1372 in 1996, Soldiers who are on a promotion list will be retired at the higher grade. However, for Soldiers who entered the military after 7 September 1980, the definition of retired pay base results in no impact on retired pay. Per amendment to 10 USC 1212 in 2001, Soldiers being separated for disability who are on a promotion list will receive severance pay at the promotion list grade since its formula is based on the basic pay of the applicable grade.

1. **Adjudication process:**

(1) Board composition: Adjudication is normally by a three-member board composed of a mixture of military and civilian personnel. The President is normally a colonel, but may be a GS-13 Civilian Adjudication Officer. The Personnel Management Officer (PMO) may be a field grade officer or a GS-13 Civilian Adjudication Officer. The physician may be civilian or military. When military members are used as the President or PMO, they may be of any branch except the Special Branches. When an RC appears before the board, one member must be of the Reserve Components.


(2) Informal: The initial findings and recommendations are based on a records review without the Soldier's presence.

(3) Formal: Soldiers who disagree with the informal findings and who are found unfit are entitled by law to a formal hearing. Soldiers who are determined fit may request the PEB President to grant them a formal hearing. Soldiers may elect to appear or not appear and to be represented by appointed counsel or by counsel of choice at no expense to the government. Soldiers may request essential witnesses to testify on their behalf. The PEB President determines whether witnesses are essential.

(4) Appellate and quality review: USAPDA reviews those cases in which the Soldier disagrees with the findings of the PEB and submits a rebuttal. Additionally, USAPDA designates certain cases for mandatory review and conducts a sample review of others. If USAPDA changes the findings of the PEB and the Soldier nonconcurs and submits a rebuttal, the case is forwarded to the Army Physical Disability Appeal Board (APDAB) for final decision.

m. **Differences between PDES and DVA**: While both the Army and the Department of Veterans Affairs (DVA) use the Department of Veterans Affairs Schedule for Rating Disabilities, not all the general policy provisions set forth in the Rating Schedule apply to the military. Consequently, disability ratings may vary between the two. The Army rates only conditions determined to be physically unfitting, compensating for loss of a military career. The DVA may rate any service-connected impairment, thus compensating for loss of civilian employability. Another difference is the term of the rating. The Army's ratings are permanent upon final disposition. DVA ratings may fluctuate with time, depending upon the progress of the condition. Further, the Army's disability compensation is affected by years of service and basic pay; while VA compensation is a flat amount based upon the percentage rating received.

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